1879
10-6

IN THE

Supreme Court of the United States,

No. 842 OCTOBER TERM, 1879.

Error to the Circuit Court of the United States for the Third Circuit.

J. O. TINSTMAN,

PLAINTIFF IN ERROR AND DEFENDANT BELOW,

VERSUS

THE FIRST NATIONAL BANK OF MOUNT PLEASANT,

A corporation organized under the laws of the United States,

DEFENDANT IN ERROR AND PLAINTIFF BELOW.

BRIEF IN FAVOR OF THE MOTION TO DISMISS.

D. T. WATSON,
Attorney for Motion.

PITTSBURGH:
A. A. ANDERSON & SON, BOOK AND JOB PRINTERS, 99 FIFTH AVENUE.
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Error to the Circuit Court of the United States for the Third Circuit.

And now comes the First National Bank of Mount Pleasant, the defendant in error, and by D. T. Watson, its attorney, moves the court to dismiss the writ of error issued in this case for the following reasons:

REASONS.

(I.) The matter in dispute does not exceed the sum or value of five thousand dollars exclusive of costs, and therefore the judgment of the court below is not reviewable here.

(II.) In the case stated, on which judgment was entered in the court below, the defendant (Tinstman) admits "that plaintiff (First National Bank of Mount Pleasant) is entitled to a judgment in this case for $5,099.59. * * * but the plaintiff claims a judgment for the whole of said $8,233.79, with interest from June 4th, 1876." On January 20th, 1879, the Circuit Court entered judgment for the Bank for $9,510.02.

The defendant below (plaintiff in error) having admitted that the plaintiff below (defendant in error) was entitled to a judgment for $5,099.59, and the judgment entered by the court below being for

$9,510.02, the *matter in dispute* is the difference between said sum of $5,099.59, and said sum of $9,510.02, which is $4.410.43. As it is less than $5,000 this court has no jurisdiction to review the action of the court below.

(III.) The plaintiff in error's (defendant below) defence to the action was to only part of the claim, and was in the nature of a set off. The total sum he claimed to set off was less than five thousand dollars. (See case stated.) As this was the only amount in dispute this court has not jurisdiction of this writ of error.

BRIEF IN FAVOR OF THE MOTION TO DISMISS.

Under the Act approved February 16, 1875, it is provided that "judgments and decrees hereafter rendered *shall not be examined in the Supreme Court unless the matter in dispute shall exceed the sum or value of five thousand dollars*, exclusive of costs."

In the words of the statute "*unless the matter in dispute*" in this case exceeds "*the sum or value of five thousand dollars*," this court cannot review the judgment of the court below.

As Tinstman, the plaintiff in error, but defendant below, did not deny the validity of the claim of the Bank, or the right of the Bank to recover a large portion of its claim, but on the contrary, by the case stated hereinafter printed, expressly admitted the right of the bank to recover $5,099.59, it is obvious that "*the matter in dispute*" between Tinstman and the Bank was and is the difference between what Tinstman admitted to be due the Bank, to wit, $5,099.59, and the sum which the Bank claimed and for which the court below entered judgment in favor of the Bank and against Tinstman, to wit, $9,510.02. This difference is $4,410.43. As it does not amount to $5,000 the jurisdiction of this court does not attach.

It is submitted that the principal ruled by this court, in Ryan vs. Bindley, 1 *Wallace*, 67, governs this case. There the amount claimed by the plaintiff in his declaration was only one thousand dollars ($1,000), but the defendant gave notice of set off that plain-

tiff owed him four thousand dollars, and claimed a certificate in his (defendant's) favor. The court below entered judgment for the plaintiff and the defendant sued out a writ of error to this court. This court unanimously held that the set off was "*the matter in dispute*," and as the case was prior to the Act of 1875, the amount was sufficient to give the court jurisdiction.

If, then, the set off constitutes "*the matter in dispute*," and in this case the set off does not amount to five thousand dollars, this court is prohibited by the express words of the Act of 1875 from reviewing the judgment of the court below.

Whether the defence is strictly by way of what would be a technical set off under the statutes prevailing in Ohio and Pennsylvania, or whether it be by way of a reduction of the claim sued for, and thus more strictly analagous to a set off at common law, is immaterial in the consideration of this motion. In either case what we have here to determine is—*what is the matter in dispute? Does it exceed five thousand dollars?*

If the defandant below *admitted* that the plaintiff below was entitled to a judgment for $\$5{,}099\frac{59}{100}$, that much is *not* in dispute, because both sides so far agree. They differ or *dispute* only as to whatever the plaintiff claims to recover over $\$5{,}099\frac{59}{100}$. In this case, as shown, this difference or dispute involves only $\$4{,}410\frac{43}{100}$, less than the sum or value which would give this court jurisdiction.

The following cases are also referred to as supporting this reasoning and the motion to dismiss this writ of error:

Hyam vs. Forson, 10 *Peters*, 160.
Seaver vs. Biglow, 5 *Wallace*, 209.
Lee vs. Watson, 1 *Wallace*, 338.
Grant vs. McKee, 1 *Peters*, 248.
Delballe vs. Harrison *et. al*, 3 *Otto*, 234.
Nevil vs. Petty, 16 *Wallace*, 345.
Sampson vs. Welsh, 24 *Howard*, 207.

The amount in controversy at the time of the judgment, not considering interest subsequently accrued, determines the jurisdiction.

Knapp vs. Banks, 2 *Howard*, 73.

D. T. WATSON,
Attorney for Motion.

APPENDIX.

DOCKET ENTRIES.

THE FIRST NATIONAL BANK OF MOUNT PLEASANT, PA., a corporation of and organized under the laws of the United States, providing for national banking associations, and established and carrying on business within the Western District of Pennsylvania

vs.

JACOB O. TINSTMAN, a citizen of the State of Pennsylvania, and resident within the Western District of Pennsylvania.

In the Circuit Court of the United States for the Western District of Pennsylvania, No. 117, May Term, 1878.

Præcipe and affidavit filed May 4, 1878; 1878, May 6, *scire facias* sur-mortgage, dated October 1st, 1875, recorded November 3d, 1875, in the office of the Recorder of Deeds for the County of Fayette, State of Pennsylvania, in mortgage book 9, page 28, returnable first Monday of June next. Mortgage filed May 4, 1878; 1878, May 15th, *sci. fa.* served personally and by copy upon Jacob O. Tinstman, mor. $6.10; 1878, June 1st, affidavit of defence filed; 1878, September 10, plea of defendant filed; 1878, November 27th, jury called and sworn, and after trial verdict rendered in favor of plaintiff and against defendant for the sum of nine thousand three hundred and eighty-six and $\frac{52}{100}$ ($9,386.52) dollars; 1878, December 2, judgment is hereby entered in this case upon the verdict. H. D. Gamble, clerk. 1878, December 28th, on motion and by consent of counsel for plaintiff and defendant the verdict in this case set aside, per order filed, and same day cause submitted to the court upon a case stated without argument; 1879, January 22d, order of court, upon case stated, filed, allowing judgment to be entered in favor of plaintiff for the sum of eight thousand two hundred and

thirty-three and $\frac{79}{100}$ ($8,233.79) dollars, with interest, from June 4, 1876; 1879, January 22d, judgment liquidated at and hereby entered in favor of plaintiff for the sum of nine thousand five hundred and ten $\frac{02}{100}$ ($9,510.02) dollars. H. D. Gamble, clerk. 1879, January 27th, *lev. fa.* issued at No. 27, May Term, 1879; 1879, April 2d, *lev. fa.* returned stayed; 1879, March 25th, writ of error allowed by Hon. Wm. McKennan, Circuit Judge, bearing test as of this date, commanding the record and proceedings in this cause to be transmitted to the Supreme Court of the United States, at Washington, D. C., received and filed. Also citation bearing test March 25th, 1879, directed to the plaintiff in the above cause, allowed by W. McKennan, Circuit Judge, and returnable on a like day, with the writ of error herein, to wit: Second Monday of October next, filed; 1879, September 12th, bond and security on writ of error approved as of April 16th, 1879, and same filed.

CASE STATED.

THE FIRST NATIONAL BANK OF MOUNT PLEASANT, PENNSYLVANIA,

vs.

J. O. TINSTMAN.

In the Circuit Court of the United States, for the Western District of Pennsylvania. No. 117 May Term, 1878.

And now, December 28, 1878, it is hereby agreed by and between the parties to the above suit that the following case be stated for the opinion of the court in the nature of a special verdict.

The plaintiff is a National Bank, duly organized and incorporated in 1868 under the Acts of Congress of the United States providing for the incorporation and regulation of national banks, and is located at Mount Pleasant, in the State of Pennsylvania, where it has been carrying on business since 1868.

On the first day of October, A. D., 1875, the defendant, being then indebted to the plaintiff, gave to it in good faith to secure said pre-existing debt a mortgage, dated October 1st, A. D. 1875, and duly recorded in the recorder's office of Westmoreland county, Pennsylvania, in mortgage book, vol. 9, page 28, which is the mortgage upon which the above suit was brought.

The indebtedness originated in manner as follows: The defendant, desirous of procuring a loan from the plaintiff, procured his (defendant's) brother, A. O. Tinstman, to indorse defendant's notes for him (defendant), and defendant took this note to the plaintiff. Whereupon the plaintiff knowing the indorsement to be for the accommodation of the maker, took the note, deducted from the face of it the amount of interest agreed upon, to wit: at the rate of nine per cent. per annum, and paid to the defendant the balance in money. This note was renewed from time to time at same rate of interest, until the mortgage was given on the first day of October, 1875, which was given for the amount then due on said loan for debt and interest as aforesaid.

The total sum of the said precedent debt, principal and interest, was $\$8{,}233\frac{79}{100}$. The rate of interest taken, charged and received by the bank on account of such indebtedness was agreed upon between said bank and said defendant, and was nine per cent. per annum, and amounts in the aggregate to the sum of $\$3{,}134\frac{20}{100}$, and was so taken by said bank between the 28th day of July, A. D. 1871, and the 1st day of October, 1875.

The defendant admits that the plaintiff is entitled to a judgment in this case for $\$5{,}099\frac{59}{100}$, being the whole of said principal, less said $\$3{,}134\frac{20}{100}$; but the plaintiff claims a judgment for the whole of said $\$8{,}233\frac{79}{100}$, with interest from June 4th, 1876.

The following named banks of the State of Pennsylvania have from the date of their respective charters, by special Acts of Assembly, been organized and carrying on business under said charters and Acts in the State of Pennsylvania, and said Acts of Assembly of the State of Pennsylvania herein referred to by title and date of approval, shall be considered as though they were each recited at length, and may be so regard for the purposes of this case.

An Act entitled, "An Act to incorporate the Manayunk Bank, located in the city of Philadelphia." Approved June 14th A. D. 1871.

An Act entitled, "An Act to incoporate the Bank of America." Approved April 27, 1870.

An Act entitled, "An Act to incorporate the People's Bank of Philadelphia." Approved February 25, A. D. 1870.

An Act entitled, "An Act to incorporate the United States Banking Company." Approved June 2, A. D. 1871.

An Act entitled, "An Act to incorporate the Twenty-second Ward Bank of Germantown." Approved May 17, A. D. 1871.

An Act entitled, "An Act to incorporate the Iron Bank of Philadelphia." Approved May 19, A. D. 1871.

An Act entitled, "An Act to incorporate the Iron Bank of Phœnixville." Approved May 4, A. D. 1871.

An Act entitled, "An Act to incorporate the State National Bank." Approved June 2, A. D. 1871.

An Act entitled, "An Act to incorporate the Tenth Ward Bank of Philadelphia." Approved March 12, A. D. 1872.

An Act entitled, "An Act to incorporate the City Bank of Scranton." Approved March 20, A. D. 1871.

An Act entitled, "An Act to incorporate the State Bank of Delaware County." Approved May 19, A. D. 1871.

An Act entitled, "An Act to incorporate the Butchers' and Drovers' Bank." Approved April 27, A. D. 1870.

An Act entitled, "An Act to incorporate the Market Bank." Approved April 27, A. D. 1870.

An Act entitled, "An Act to incorporate the Quaker City Bank." Approved May 23, A. D. 1871.

An Act entitled, "An Act to incorporate the Franklin Bank." Approved April 1, A. D. 1870.

An Act entitled, "An Act to incorporate the West End Bank of Philadelphia." Approved November 20, A. D. 1871.

An Act entitled, "An Act to incorporate the Southwark Banking Company." Approved June 2, A. D. 1871.

True copies of three of the charters of these banks are hereto attached as part hereof. Each of said banks claims the right to issue its own bank notes under the said Acts of Assembly, and the Acts of Assembly hereinafter referred to, but no one of said banks ever issued its own bank notes, and the defendant claims that under said Acts of Assembly none of said banks have the right to issue.

And the following Acts of Assembly of the State of Pennsylvania referred to by title and date of approval shall be considered as though they were each recited at length herein, and may be so regarded for the purposes of this case:

An Act entitled, "An Act for reducing the interest of money from eight to six yer cent. per annum." Approved March 2, A. D. 1723.

An Act entitled, "An Act regulating banks." Approved April 16, A. D. 1850.

An Act entitled, "An Act regulating the rate of interest," Approved May 28, A. D. 1858.

An Act entitled, "An Act to establish a system of free banking in Pennsylvania, and to secure the public against loss from insolvent banks." Approved March 31, A. D. 1860.

An Act entitled, "A supplement to an Act to establish a system of free banking in Pennsylvania, and to secure the public against loss from insolvent banks. Approved March 31, A. D. 1860." Approved May 1, A. D. 1861.

And the supplements and amendments to any and all of said Acts, and all of the aforesaid Acts and the various supplements thereto may be copied, and added hereto, and made part hereof by either party, at any time during the pendency of this suit, and the other party shall consent thereto. If the court should be of opinion on the above stated facts, that the plaintiff could lawfully take, charge and receive of and from the defendant by agreement between the plaintiff and defendant on such a direct loan interest at the rate of nine per centum per annum, then judgment shall be entered in favor of the plaintiff for the sum of $\$8{,}233\frac{79}{100}$, with interest from June 4, 1876, but if the court should be of opinion that the plaintiff could not legally take, receive and charge by agreement as aforesaid interest at the rate of nine per centum per annum, but that the same was usurious, and that the offset of $\$3{,}134\frac{20}{100}$ was claimed by the defendant in due time under the Acts of Congress, then judgment shall be entered for the plaintiff for the sum of $\$5{,}099\frac{59}{100}$, with such if any interest it may be entitled to under the above stated facts, either party reserving the right to sue out a writ of error.

D. T. WATSON,
Attorney for Plaintiff.
WELTY MCCULLOUGH,
Attorney for Defendant.

December 21st, 1878.

1879
10-6

Dismiss

IN THE

Supreme Court of the United States.

No. 842, October Term, 1879.

ERROR TO THE CIRCUIT COURT OF THE UNITED STATES, FOR THE THIRD CIRCUIT.

Jacob O. Tinstman,

PLAINTIFF IN ERROR AND DEFENDANT BELOW,

VS.

The First National Bank of Mount Pleasant.

DEFENDANT IN ERROR AND PLAINTIFF BELOW.

WELTY McCULLOGH,

Attorney for Plaintiff in Error.

Jackson & McEwen, Print. Cor. Wood Street and Third Avenue, Pittsburgh.

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WELTY McCULLOGH,

Attorney for Plaintiff in Error.

Jackson & McEwen, Print. Cor. Wood Street and Third Avenue, Pittsburgh.

IN THE

Supreme Court of the United States.

No. , *October Term, 1879.*

ERROR TO THE CIRCUIT COURT OF THE UNITED STATES, FOR THE THIRD CIRCUIT.

JACOB O. TINSTMAN,

PLAINTIFF IN ERROR AND DEFENDANT BELOW,

VERSUS

THE FIRST NATIONAL BANK OF MOUNT PLEASANT.

DEFENDANT IN ERROR AND PLAINTIFF BELOW.

BRIEF OF ARGUMENT AGAINST MOTION TO DISMISS.

The first two sentences of the argument submitted by the attorney for the motion are admitted to be correct.

Beyond this, it is contended that the argument is a misapplication of the cases cited in support thereof. In the majority of the cases cited the ruling of the Court was based upon the total amount claimed or recovered by the plaintiff, and in addition thereto the amount of set-off claimed by the defendant and adjudicated upon, thereby making the total "amount in dis-

pute." This is notably the case in Ryan *vs.* Bindley, 1 Wallace, 67. No such question arises in this case. The plaintiff in the case stated claims $\$8{,}233\frac{79}{100}$, with interest from June 4th, 1876, and the judgment of the Court below is for that amount. That judgment is either right or wrong, and will be either affirmed or reversed, on the writ of error now pending, by this Court.

In Gordon *vs.* Ogden, 3 Peters, 32, this is ruled in terms, as follows, viz.,

"The jurisdiction of this Court depends on the sum or value in dispute between the parties, as the case stands upon the writ of error in this Court, not on that which was in dispute in the Circuit Court.

If the writ of error be brought by the defendant in the original action, the judgment of this Court can only affirm that of the Circuit Court, and consequently the matter in dispute cannot exceed the amount of that judgment: nothing but that judgment is in dispute between the parties."

And this position is distinctly affirmed in Wise and Lynn *vs.* the Columbian Turnpike Co., 7 Cranch, 276; Knapp *vs.* Banks, 2 Howard, 73, and is supported by 3 Howard, 771, Winston *vs.* United States. 19 Howard, 112, Hurley *vs.* Steamer St. Charles, 41. 20 Howard, 55, Brown *vs.* Shannon. 24 Howard, 460. Phillips Sup. Ct. Practice, Chapter VIII.

In the Appendix will be found the entry of the judgment as it appears on the Judgment Docket of the Court below.

WELTY McCULLOGH,

Attorney for Writ of Error.

Defendant,	Plaintiff,	No.	Term,	Year	Date of Judgment,	Amount.		Costs.		Remarks.
Tinstman, Jacob O.	First National Bank, Mt. Pleasant.	117.	May.	1878.	Dec. 2, 1878.	$9,310	02	$37	10	Sci. Fa. Sur. Mortgage.